

## City Political Advertisement

## CITY COUNCIL POLITICAL ADVERTISEMENT

**Response Requested:** Susanville City Council

**Findings:** The Lassen County Grand Jury received several complaints dealing with the City of Susanville. Some were found to be worthy of a closer look and some were frivolous by their very nature.

The Grand Jury did investigate one complaint in particular. The complaint dealt with the release of a newspaper advertisement two weeks prior to the March 2, 2004 election. This advertisement contained information about the financial status of the City of Susanville and its future. The complaint contained concerns that three City Councilmen, who were up for re-election, used city funds to promote the work they had done, hoping the public would agree and re-elect them. The question was raised that publishing such an advertisement two weeks before the election might violate Government Code Section 89001 Public Expense and Fair Political Practices Commission Regulations 18901, 18255, 18435, etc.

The Grand Jury Committee contacted several people who were responsible for the advertisement, including, but not limited to, all the council members and the city administrator, who gave Grand Jury testimony. A court reporter recorded all testimony, which was given under oath. It was discovered that the city council as a whole, with the exception of one member and the city administrator, knew very little about what type of publication was printed or when it was released to the public. They also did not research to see if the figures in this advertisement were accurate.

The advertisement, paid for with city funds, was not necessarily improper, assuming the funds were available and the timing legal. The Grand Jury, however, referred this complaint to the Fair Political Practices Commission, believing that the city council had violated the above-referenced government code and FPPC regulations, and requested an investigation and ruling from them. The FPPC responded on April 22, 2004 (see appendix for copy of response). They replied that because the City of Susanville had no prior disciplinary action for such events or publications, a warning letter was issued to all City Council members. After several discussions with the FPPC, it was clear that a

warning letter was sent, in place of taking action, because the state-run agency was short of funds.

The figures released to the public were not accurate. The budget projections were represented as factual, not as projections, subject to change once an audit was completed for fiscal year 2003. This was irresponsible of the City Council. If the Council is going to release information to the public, each member must insure facts are correct and do not mislead the public or distort the truth. Elected officials owe citizens the truth, whether they have good or bad news to deliver on the status of the city.

Another important fact, the advertisement did not show was the amount of debt the City of Susanville has incurred in the last several years' totals \$35,000,000.

**RECOMMENDATIONS:**

- 1) Take the responsibility and the necessary time to research and verify facts for publication. Ask the City Administrator, and others who report to the City Council, to support their information with accurate, timely, and complete reports.
- 2) Understand FPPC codes and follow their regulations when considering publications.
- 3) Produce, if funds are available, an annual informational report on the status of the city. Such a report can be positive, if presented with supporting information for the council's actions concerning city projects, etc.



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329  
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April 22, 2004

Mark Viale, Foreman  
Lassen County Grand Jury  
202 S. Lassen, Suite 6  
Susanville, CA 96130

Re: FPPC Correspondence No. 040194, City of Susanville

Dear Mr. Viale:

In further response to the complaint you submitted regarding the above-referenced matter, please be advised that, for the reasons set forth below, the Enforcement Division is closing its file on this matter without instituting an enforcement action.

Your complaint alleged that Lino Callegari and the City Administrator for the City of Susanville violated the mass mailing at public expense provisions of the Political Reform Act.

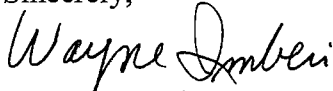
The Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act") found in Government Code section 81000, et seq. Section 89001 and Commission Regulation 18901 prohibit mass mailings of more than 200 substantially similar items at public expense which feature elected officials. Pursuant to Regulation 18901, subdivision (c)(2), an elected officer is "featured" if the elected officer's photograph or signature is included in the mailing or the elected officer is singled out in the layout or the mailing by headlines, captions, type size, typeface or type color.

Included with your complaint was a four page "Report to the Community," dated February 17, 2004 which was alleged was sent to the residents of Susanville as an insert in a local weekly newspaper. If public funds were used to produce this Report and it was in fact distributed to the public, and not exclusively to subscribers of the newspaper, it violated the Act because it featured all of the members of the city council and the mayor

by singling them out by the manner of display of their name and it included the signatures of each. The Enforcement Division has decided not to take enforcement action because the city of Susanville and the elected officers included in the mailing have no prior history of violations of the Act. However, we are sending advisory letters to the mayor and to all of the members of the city council.

Thank you for taking the time to bring this matter to our attention. Please do not hesitate to contact us if you have any questions regarding this decision.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Imberi".

Wayne Imberi  
Political Reform Consultant  
Enforcement Division



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#### 18225. Expenditure

(a) An expenditure is any monetary or nonmonetary payment made for political purposes. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Made by:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder;

(B) A controlled committee;

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or

(D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.

(b) "Expenditure" includes any monetary or non-monetary payment made by any person, other than those persons or organizations described in subsection (a), that is used for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure.

(1) "Clearly identified" has the following meaning:

(A) A candidate is clearly identified if the communication states his name, makes unambiguous reference to his office or status as a candidate, or unambiguously describes him in any manner.

(B) A group of candidates is clearly identified if the communication makes unambiguous reference to some well-defined characteristic of the group, even if the communication does not name each candidate. A communication that clearly identifies a group of candidates and expressly advocates their election or defeat is reportable as an expenditure, but the expenditure need not be allocated among all the members of the class or group on the campaign statement reporting the expenditure.

(C) A measure that has qualified to be placed on the ballot is clearly identified if the communication states a proposition number, official title or popular name associated with the measure. In addition, the measure is clearly identified if the communication refers to the subject matter of the measure and either states that the measure is before the people for a



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#### 18435. Definition of Mass Mailing and Sender

(a) A "mass mailing" has been made when over two hundred substantially similar pieces of mail have been sent within a calendar month.

(b) The sender, as used in Government Code Section 84305, is the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing, and posting of the mailing which are reportable under Government Code Sections 84200-84217.

(c) For purposes of this section to "pay for" a share of the cost of a mass mailing means to make, to promise to make, or to incur an obligation to make, any payment:

(1) To any person for the design, printing, postage, materials or other costs (including salaries, fees, or commissions) of the mailing; or

(2) As a fee or other consideration for an endorsement or, in the case of a ballot measure, support of opposition, in the mailing.

Note: Authority: Section 83112, Gov. Code

Reference: Sections 82041.5 and 84305, Gov. Code

#### History

(1) New section filed 6-17-76; effective thirtieth day thereafter.

(2) Amendment filed 2-17-82; effective thirtieth day thereafter.

(3) Amendment filed 12-15-83; effective thirtieth day thereafter.

(4) Amendment filed 7-28-92; effective thirtieth day thereafter.



vote or, taken as a whole and in context, unambiguously refers to the measure.

(D) A measure that has not qualified to be placed on the ballot is clearly identified if the communication refers to the subject matter of the measure and to the qualification drive.

(2) A communication "expressly advocates" the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," "sign petitions for" or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

(3) Reporting expenditures.

(A) The amount of an expenditure reportable pursuant to this subsection shall include all costs directly attributable to the communication, including but not limited to salaries, production, postage, space or time purchased, agency fees, printing and any additional administrative or overhead costs attributable to the communication. The expenditure does not include any of the regular ongoing business overhead which will be incurred in similar amounts regardless of the communication.

(B) When printed or broadcast communications circulate outside the State of California, the expenditure may be calculated on the basis of the fraction of the total cost attributable to circulation within California.

(C) Costs directly traceable to the communication are reportable when the communication is made, or when payments are made in connection with the development, production or dissemination of the communication, whichever is earlier.

(D) The costs of printing and distributing petitions, recruiting, training and paying expenses of petition circulators, and other costs incurred in connection with qualification of a measure are reportable "expenditures."

(4) Notwithstanding the provisions of this subsection, the term expenditure does not include costs incurred for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates or the qualification, passage or defeat of a clearly identified measure or measures by:

A) A regularly published newspaper, magazine or other periodical of general circulation which routinely carries news, articles and commentary of general interest.

(B) A federally regulated broadcast outlet.

(C) A regularly published newsletter or regularly published periodical, other than those specified in paragraph (b)(4)(A), whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This paragraph applies only to the costs regularly incurred in publishing and distributing the newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or substantially altered in style, size or format, the additional costs are expenditures.

(c) Any payment used to make contributions, as defined in Government Code Section 82015 and 2 Cal. Adm. Code Section 18215, is an expenditure.

Note: Authority: Section 83112, Gov. Code

Reference: Section 82025 Gov. Code

History



- (1) New section filed 4-30-76; effective thirtieth day thereafter.
- (2) Amendment of subsection (c)(3)(D) filed 5-22-78; effective thirtieth day thereafter.
- (3) Amendment filed 2-17-82; effective thirtieth day thereafter.
- (4) Editorial correction of subsection (b)(4)(C) filed 4-28-83; effective thirtieth day thereafter.
- (5) Amendment of subsection (a) filed 3-8-84; effective thirtieth day thereafter.



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#### 18901. Mass Mailings Sent at Public Expense

(a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

(1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

(3)(A) Any of the costs of distribution is paid for with public moneys; or

(B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).

(b) Notwithstanding subdivision (a), mass mailing of the following items is not prohibited by Section 89001:

(1) Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted in this subdivision (b)(1) or elsewhere in this regulation.

(2) A press release sent to members of the media.

(3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

(4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.

(5) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer except as specifically permitted in this subdivision (b)(5) or elsewhere in this regulation.

(6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

(7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to such a notice or other item.

(8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color. Such item may not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted in this subdivision (b)(8) or elsewhere in this regulation.

(9) (A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.

1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.

2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this regulation.

(10) An agenda or other writing that is required to be made available pursuant to Sections 11125.1 and 54957.5 of the Government Code, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

(11) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.

(c) The following definitions shall govern the interpretation of this regulation:

(i) "Elected officer affiliated with the agency" means an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency, or who appoints one or more members of the agency.

(2) "Features an elected officer" means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size,

typeface, or type color.

(3) "Substantially similar" is defined as follows:

(A) Two items are "substantially similar" if any of the following applies:

1. The items are identical, except for changes necessary to identify the recipient and his or her address.
2. The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.
3. Both of the following apply to the items mailed:
  - a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.
  - b. Most of the information contained in one item is contained in the other.

(B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are "substantially similar." Such informational materials may not include the elected officer's name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this regulation.

(4) "Unsolicited request" is defined as follows:

(A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his or her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.

(B) An unsolicited request for continuing information on a subject shall be considered an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.

(C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, his or her name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

"The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so."

Inclusion of a similar notice in other items shall not constitute a solicitation under this regulation.

(D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to his or her issuance of a press release, shall be considered an unsolicited request.

(E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

Note: Authority: Section 83112, Gov. Code

Reference: Sections 82041.5 and 89001, Gov. Code

History

- (1) New section filed 10-18-77; effective thirtieth day thereafter.
- (2) Amendment filed 10-29-81; effective thirtieth day thereafter.
- (3) Editorial correction of subsection (d)(5).
- (4) Amendment filed 12-27-82; effective thirtieth day thereafter.
- (5) Amendment filed 8-8-88 as an emergency; effective upon filing. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-6-88.
- (6) Reinstatement of section as it existed prior to 8-8-88 emergency amendment by operation of Government Code Section 11346.1(f).
- (7) Amendment filed 12-9-88 as an emergency readoption of amendment originally filed 8-8-88; designated effective 12-9-88. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-8-89.
- (8) Certificate of Compliance including repealer of Section 18901 and new Section 18901 transmitted to OAL 2-9-89 and filed 3-13-89; effective thirtieth day thereafter.
- (9) Readopted as new section filed 6-29-90; effective thirtieth day thereafter.

